

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2008-299-C - ORDER NO. 2008-672
OCTOBER 3, 2008

IN RE: Hargray Wireless, LLC Request Certification)	ORDER GRANTING
of the Use of Universal Service Funds)	ANNUAL
Pursuant to 47 C.F.R 54.314 and)	CERTIFICATION AND
Telecommunications Act 254(e) Federal)	RULING ON
Communications Commission CC Docket)	PARTICIPATION IN
No. 96-45)	STATE UNIVERSAL
)	SERVICE FUND

This matter comes before the Public Service Commission of South Carolina (“Commission”) and concerns the Commission’s certification to the Federal Communications Commission (“FCC”) and the Universal Services Administrative Company (“USAC”) that Hargray Wireless, LLC (“Hargray” or “the Company”) will use its Federal High Cost Fund Disbursements for the year 2009 in accordance with federal law and regulations.

By way of background, this Commission received a letter from the Office of Regulatory Staff (“ORS”) requesting that this Commission refrain from issuing the certification letters for Hargray and two other wireless Eligible Telecommunications Carriers (“ETCs”) in South Carolina until such time as it was able to determine their status with respect to contributions to the South Carolina Universal Service Fund (“SCUSF”). Subsequent to that request, counsel for Hargray submitted a letter, contending that the Company “is unaware that the Commission has issued any order requiring that Hargray Wireless contribute to the South Carolina Universal Service Fund

as would be required by statute.” Counsel went on to discuss Commission Order No. 2001-419 and S.C. Code Ann. Section 58-9-280 (E) (3) (Supp. 2007). The referenced statute calls for “notice and opportunity for hearing” before a wireless carrier may be required to contribute to the SCUSF:

(3) The commission also shall require any company providing telecommunications service to contribute to the USF if, after notice and opportunity for hearing, the commission determines that the company is providing private local exchange services or radio-based local exchange services in this State that compete with a local telecommunications service provided in this State.

While we agree that the statute requires notice and hearing, we find that the issue contemplated by the statute to be addressed at such a hearing is whether there is local competition regarding the provision of private local exchange or wireless services, not whether the company at issue should contribute to the USF. In fact, the statute requires contribution to the USF once competition has been determined.

This same interpretation underpins Order No. 2001-419, in which this Commission made clear that it considers the application for competitive ETC status and its subsequent hearing to be the notice and hearing called for in the statute. The Order holds in part that “[i]f a wireless carrier applies to this Commission for carrier of last resort or eligible telecommunications carrier status, such application would be considered a declaration of that carrier’s intent to offer services that compete with local telecommunications services being provided in the State, and that carrier will be required, upon approval of the request for carrier of last resort or eligible telecommunications carrier status, to contribute to the State USF.” Order No. 2001-419 at 37. Hargray applied to this Commission for ETC status, and, after hearing, was granted ETC status. See Order

No. 2007-804. Thus, we hold that Hargray is required under statute to submit the appropriate worksheet to ORS and commence payments to the SCUSF.

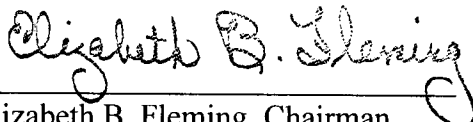
However, the certification for receipt of Federal High Cost Fund Disbursement is a separate and distinct issue. The annual certification to the FCC and USAC are based upon this Commission's finding that Hargray will use the Federal Funds in a manner consistent with Federal Law and FCC regulations. We hold that, based upon the record, Hargray has met the requirements for annual recertification.

Accordingly, we hold and so order the following:

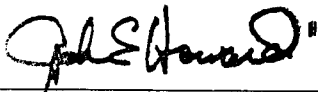
1. That Hargray has met the conditions for annual recertification to the FCC and USAC;
2. That the Commission Staff is directed to issue a certification letter to the FCC and USAC certifying that Hargray will utilize its payments from the Federal USF in accordance with statute and regulation;
3. That Hargray is ordered to submit the appropriate South Carolina Universal Service Fund Worksheet(s) to ORS for immediate processing;
4. That Hargray is not required to make retroactive payments to the SCUSF;
5. That Hargray commence payments to the SCUSF as determined by ORS.

This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:


Elizabeth B. Fleming, Chairman

ATTEST:


John E. Howard, Vice Chairman
(SEAL)